

# HOUSE BILL No. 1776

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 12-26; IC 35-33-5.

**Synopsis:** Seizing weapons from a mentally ill individual. Permits a law enforcement officer to seize a firearm possessed by an individual whom the officer reasonably believes to be mentally ill and dangerous. Requires the firearm to be returned to the individual within 45 days unless a court finds that the individual is mentally ill and dangerous and that retention of the firearm by the law enforcement agency is appropriate. Permits a court to issue a search warrant for a firearm possessed by an individual believed to be mentally ill and dangerous. Allows an individual whose firearm has been seized and retained to petition the court for review of the retention order once every six months. Authorizes a court to order a firearm retained by a law enforcement agency to be destroyed or otherwise disposed of after five years. Makes conforming amendments. (The introduced version of this bill was prepared by the commission on mental health.)

**Effective:** July 1, 2005.

**Buell**

January 19, 2005, read first time and referred to Committee on Public Safety and Homeland Security.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1776

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 12-26-1-1 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. **(a)** An individual  
3       who is mentally ill and either dangerous or gravely disabled may be  
4       involuntarily detained or committed under any of the following  
5       statutes:

- 6           (1) IC 12-26-4 (immediate detention).
- 7           (2) IC 12-26-5 (emergency detention).
- 8           (3) IC 12-26-6 (temporary commitment).
- 9           (4) IC 12-26-7 (regular commitment).

10       **(b) A firearm possessed by an individual who is mentally ill and**  
11       **dangerous may be seized or retained under IC 12-26-7.5.**

12       SECTION 2. IC 12-26-1-5 IS AMENDED TO READ AS  
13       FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) If a:

- 14           (1) commitment proceeding is begun under IC 12-26-3-5,  
15           IC 12-26-6-2(a)(1), or IC 12-26-6-2(a)(3); **or**

16           **(2) firearm retention proceeding is begun under IC 12-26-7.5;**  
17       the court acquires jurisdiction over the alleged mentally ill individual



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by service of summons on the individual according to the Indiana Rules of Trial Procedure or by entry of an appearance by the individual.

(b) If an individual is being held under IC 12-26-6-2(a)(2), the court retains jurisdiction over the individual by the court's order for continued detention.

**(c) If a court orders a law enforcement agency to retain custody of a firearm in a proceeding under IC 12-26-7.5-9, the court retains jurisdiction over the individual by the court's order that the firearm be retained.**

SECTION 3. IC 12-26-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) In a proceeding involving **the retention of a firearm or** involuntary detention or commitment under this article, appeals from the final orders or judgments of the court of original jurisdiction may be taken by any of the following:

- (1) The individual who is the subject of the proceeding.
- (2) A petitioner in the proceeding.
- (3) An aggrieved person.

(b) An appeal must be taken in the same manner as any other civil case according to the Indiana Rules of Trial and Appellate Procedure.

SECTION 4. IC 12-26-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) This section applies under the following statutes:

- (1) IC 12-26-6.
- (2) IC 12-26-7.
- (3) IC 12-26-7.5.**
- ~~(3)~~ **(4)** IC 12-26-12.
- ~~(4)~~ **(5)** IC 12-26-15.

(b) The individual alleged to be mentally ill has the following rights:

- (1) To receive adequate notice of a hearing so that the individual or the individual's attorney can prepare for the hearing.
- (2) To receive a copy of a petition or an order relating to the individual.
- (3) To be present at a hearing relating to the individual. The individual's right under this subdivision is subject to the court's right to do the following:
  - (A) Remove the individual if the individual is disruptive to the proceedings.
  - (B) Waive the individual's presence at a hearing if the individual's presence would be injurious to the individual's mental health or well-being.
- (4) To be represented by counsel.

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SECTION 5. IC 12-26-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) This section applies under the following statutes:

(1) IC 12-26-6.

(2) IC 12-26-7.

**(3) IC 12-26-7.5.**

~~(3)~~ (4) IC 12-26-12.

~~(4)~~ (5) IC 12-26-15.

(b) The individual alleged to be mentally ill, each petitioner, and all other interested individuals shall be given an opportunity to appear at hearings and to testify.

(c) The individual alleged to be mentally ill and each petitioner may present and cross-examine witnesses at hearings.

(d) The court may receive the testimony of any individual.

SECTION 6. IC 12-26-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) This section applies under the following statutes:

(1) IC 12-26-6.

(2) IC 12-26-7.

**(3) IC 12-26-7.5.**

~~(3)~~ (4) IC 12-26-12.

~~(4)~~ (5) IC 12-26-15.

(b) The individual alleged to be mentally ill and a petitioner:

(1) has a right to a change of judge; and

(2) is not entitled to a change of venue from the county.

SECTION 7. IC 12-26-2-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5.5. In a firearm retention proceeding under IC 12-26-7.5-9, the prosecuting attorney must prove by a preponderance of the evidence that:**

**(1) the individual is mentally ill and dangerous; and**

**(2) retention of a firearm possessed by the individual is appropriate.**

SECTION 8. IC 12-26-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A person who without malice, bad faith, or negligence acts according to this article and:

(1) participates in proceedings for the detention or commitment of an individual; ~~or~~

(2) assists in the detention, care, and treatment of an individual alleged or adjudged to be mentally ill; ~~or~~

**(3) participates in:**

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(A) a proceeding under this article for the seizure or retention of a firearm possessed by an individual alleged to be mentally ill and dangerous; or

(B) the retention of a firearm from an individual adjudged to be mentally ill and dangerous;

is immune from any civil or criminal liability that might otherwise be imposed as a result of the person's actions.

(b) The immunity provided by this section does not permit a person to do either of the following:

(1) Physically abuse an individual.

(2) Deprive an individual of a personal or civil right except according to this article.

SECTION 9. IC 12-26-7.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

**Chapter 7.5. Proceedings for the Seizure and Retention of a Firearm**

**Sec. 1. (a)** A law enforcement officer who has reasonable grounds to believe that an individual is mentally ill and dangerous and in possession of a firearm may do the following:

(1) Charge the individual with an offense, if applicable.

(2) Apply for a warrant to seize a firearm possessed by the individual.

(b) This section does not authorize a law enforcement officer to perform a warrantless search or seizure if a warrant would otherwise be required.

**Sec. 2. (a)** Except as provided in subsection (b), a law enforcement officer who seizes a firearm possessed by an individual under section 1 of this chapter shall submit to the appropriate court a written statement containing the basis for the officer's conclusion that reasonable grounds exist under this chapter.

(b) A law enforcement officer who seizes a firearm from an individual described in section 1 of this chapter by executing a properly issued warrant is not required to submit the written statement described in subsection (a).

**Sec. 3.** A firearm seized under this chapter shall be stored by the law enforcement agency that conducted the seizure.

**Sec. 4.** Upon request, the law enforcement agency having custody of the firearm shall return the firearm to the individual not later than forty-five (45) days after the date the firearm was seized unless:

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- (1) the prosecuting attorney petitions the court to order the law enforcement agency to retain the firearm; and
- (2) the court, following a hearing, orders the law enforcement agency to retain the firearm.

**Sec. 5. (a) The prosecuting attorney may commence a proceeding under this chapter by petitioning the court to order the law enforcement agency having custody of the firearm to retain the firearm by filing with the court a written petition alleging that:**

- (1) the individual is:
  - (A) mentally ill; and
  - (B) dangerous; and
- (2) retention of the firearm by the law enforcement agency is appropriate.

**(b) The petition described in subsection (a) must contain a statement by a physician that, based on:**

- (1) an examination; or
- (2) information given to the physician;

**the individual may be mentally ill and dangerous.**

**Sec. 6. (a) Not later than three (3) days after the prosecuting attorney files a petition under section 5 of this chapter, the court shall:**

- (1) enter an order setting a hearing date; and
- (2) inform the:
  - (A) prosecuting attorney; and
  - (B) individual;

**of the date, time, and location of the hearing.**

**(b) The hearing date set under subsection (a) must be at least two (2) days after the court's order and less than forty-five (45) days after the date on which the firearm was seized.**

**(c) The court may hold the hearing at a facility or other suitable place not likely to have a harmful effect on the individual's health or well-being.**

**Sec. 7. The court may appoint a physician to do the following:**

- (1) Examine the individual.
- (2) Report, before the hearing, the physician's opinion as to whether the individual is mentally ill and dangerous.

**Sec. 8. If a report made under section 7 of this chapter is that the individual is not either mentally ill or dangerous, the court may terminate the proceedings and order the law enforcement agency having custody of the firearm to return the firearm to the individual. Otherwise, the hearing shall proceed as scheduled by the court.**

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1        **Sec. 9. (a) If, upon the completion of the hearing and**  
 2        **consideration of the record, the court finds that:**

- 3            (1) the individual is mentally ill and dangerous; and  
 4            (2) retention of a firearm seized from the individual is  
 5            appropriate;

6        the court may order the law enforcement agency to retain the  
 7        firearm.

8        (b) In determining whether an individual is dangerous, the court  
 9        shall consider whether the individual:

- 10           (1) presents a danger to the individual or to another  
 11           individual;  
 12           (2) may present a danger to the individual or to another  
 13           individual in the future; and  
 14           (3) has demonstrated a pattern of voluntarily and consistently  
 15           taking the individual's medication while not under  
 16           supervision, if the individual has a mental illness that may be  
 17           controlled by medication.

18        The fact that an individual has been released from a mental health  
 19        facility or has a mental illness that is currently controlled by  
 20        medication does not establish that an individual is not dangerous.

21        (c) If the court:

- 22           (1) makes the findings described in subsection (a); and  
 23           (2) determines that a firearm seized from the individual is  
 24           owned by another person;

25        the court may order the law enforcement agency to return the  
 26        firearm to the owner.

27        **Sec. 10. (a) At least one hundred eighty (180) days after the date**  
 28        **a court orders a law enforcement agency to retain an individual's**  
 29        **firearm under section 9 of this chapter, the individual may petition**  
 30        **the court for return of the firearm.**

31        (b) Upon receipt of the petition described in subsection (a), the  
 32        court shall:

- 33           (1) enter an order setting a hearing date; and  
 34           (2) inform the prosecuting attorney of the date, time, and  
 35           location of the hearing.

36        (c) In a hearing under this section, the individual:

- 37           (1) may be represented by an attorney; and  
 38           (2) must prove by a preponderance of the evidence that:  
 39           (A) the individual is not mentally ill;  
 40           (B) the individual is not dangerous; or  
 41           (C) retention of the firearm seized from the individual is  
 42           not appropriate.

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(d) If upon the completion of the hearing and consideration of the record, the court finds that:

- (1) the individual is not mentally ill;
- (2) the individual is not dangerous; or
- (3) retention of the firearm seized from the individual is not appropriate;

the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual.

(e) In determining whether an individual is dangerous, the court shall consider the issues described in section 9(b) of this chapter. The fact that an individual has been released from a mental health facility or has a mental illness that is currently controlled by medication does not establish that an individual is not dangerous.

(f) If the court denies an individual's petition under this section, the individual may not file a subsequent petition until at least one hundred eighty (180) days after the date the court denied the petition.

**Sec. 11. If at least five (5) years have passed since a court ordered a law enforcement agency to retain a firearm seized from an individual under section 9 of this chapter, the court, after giving notice to the individual and conducting a hearing, may order the law enforcement agency to destroy or otherwise permanently dispose of the firearm.**

SECTION 10. IC 35-33-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A court may issue warrants only upon probable cause, supported by oath or affirmation, to search any place for any of the following:

- (1) Property which is obtained unlawfully.
- (2) Property, the possession of which is unlawful.
- (3) Property used or possessed with intent to be used as the means of committing an offense or concealed to prevent an offense from being discovered.
- (4) Property constituting evidence of an offense or tending to show that a particular person committed an offense.
- (5) Any person.
- (6) Evidence necessary to enforce statutes enacted to prevent cruelty to or neglect of children.
- (7) A firearm possessed by a person who is mentally ill and dangerous.**

(b) As used in this section, "place" includes any location where property might be secreted or hidden, including buildings, persons, or vehicles.

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SECTION 11. IC 35-33-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) All items of property seized by any law enforcement agency as a result of an arrest, search warrant, or warrantless search, shall be securely held by the law enforcement agency under the order of the court trying the cause, except as provided in this section.

(b) Evidence that consists of property obtained unlawfully from its owner may be returned by the law enforcement agency to the owner before trial, in accordance with IC 35-43-4-4(h).

(c) Following the final disposition of the cause at trial level or any other final disposition the following shall be done:

(1) Property which may be lawfully possessed shall be returned to its rightful owner, if known. If ownership is unknown, a reasonable attempt shall be made by the law enforcement agency holding the property to ascertain ownership of the property. After ninety (90) days from the time:

(A) the rightful owner has been notified to take possession of the property; or

(B) a reasonable effort has been made to ascertain ownership of the property;

the law enforcement agency holding the property shall, at such time as it is convenient, dispose of this property at a public auction. The proceeds of this property shall be paid into the county general fund.

(2) Except as provided in subsection (e), property, the possession of which is unlawful, shall be destroyed by the law enforcement agency holding it sixty (60) days after final disposition of the cause.

**(3) A firearm that has been seized from a person who is mentally ill and dangerous shall be retained, returned, or disposed of in accordance with IC 12-26-7.5.**

(d) If any property described in subsection (c) was admitted into evidence in the cause, the property shall be disposed of in accordance with an order of the court trying the cause.

(e) A law enforcement agency may destroy or cause to be destroyed chemicals or controlled substances associated with the illegal manufacture of drugs or controlled substances without a court order if all the following conditions are met:

(1) The law enforcement agency collects and preserves a sufficient quantity of the chemicals or controlled substances to demonstrate that the chemicals or controlled substances were associated with the illegal manufacture of drugs or controlled

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substances.

(2) The law enforcement agency takes photographs of the illegal drug manufacturing site that accurately depict the presence and quantity of chemicals and controlled substances.

(3) The law enforcement agency completes a chemical inventory report that describes the type and quantities of chemicals and controlled substances present at the illegal manufacturing site.

The photographs and description of the property shall be admissible into evidence in place of the actual physical evidence.

(f) For purposes of preserving the record of any conviction on appeal, a photograph demonstrating the nature of the property, and an adequate description of the property must be obtained before the disposition of it. In the event of a retrial, the photograph and description of the property shall be admissible into evidence in place of the actual physical evidence. All other rules of law governing the admissibility of evidence shall apply to the photographs.

(g) The law enforcement agency disposing of property in any manner provided in subsection (b), (c), or (e) shall maintain certified records of any such disposition. Disposition by destruction of property shall be witnessed by two (2) persons who shall also attest to the destruction.

(h) This section does not affect the procedure for the disposition of firearms seized by a law enforcement agency.

(i) A law enforcement agency that disposes of property by auction under this section shall permanently stamp or otherwise permanently identify the property as property sold by the law enforcement agency.

(j) Upon motion of the prosecuting attorney, the court shall order property seized under IC 34-24-1 transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

**(k) Upon request, a law enforcement agency shall return a firearm seized under IC 12-26-7.5 to its owner if:**

**(1) forty-five (45) days have passed since the firearm was seized; and**

**(2) a court has not ordered the law enforcement agency to retain the firearm.**

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